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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 242

IVAN B. CARLSON, *Petitioner,*

v.

WILLIAM H. DICKMAN, HAROLD E. SALISBURY, LAWRENCE SMELSER and SCHOOL DISTRICT No. 62C, ET AL., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

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July 11, 1962

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Ivan B. Carlson, petitioner herein and intervenor in the proceedings below, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Oregon entered in this case on November 15, 1961.[1]

CITATION TO OPINION BELOW

The opinion of the Supreme Court of the State of Oregon, dated November 15, 1961, is reported in 73

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[1] The respondents, in addition to those named in the caption, include Dale Jacobs, Sherman Washburn, Gene Bonniksen, Howard Klemsen and Laurin Hinman, each in his official capacity as director of the District School Board of School District No. 62C, and Edwin C. Ditto, in his capacity as clerk of School District No. 62C.

Ore. (Adv. Sh.) 645 and 366 P. 2d 533, and a copy is attached hereto as Appendix A. The unreported memorandum opinion of the Circuit Court for Clackamas County is attached hereto as Appendix B.

JURISDICTION

The judgment of the Supreme Court of the State of Oregon was entered on November 15, 1961, and a timely petition for rehearing was denied on March 13, 1962. On June 5, 1962, Mr. Justice Douglas signed an order extending the time for filing this petition for a writ of certiorari to and including July 11, 1962.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

In 1941, the Oregon Legislature provided for the free use of secular text books by all children attending "standard" elementary schools, thereby including not only public schools but both religious and non-religious private schools meeting state educational standards. The questions presented are whether the Oregon Constitution, construed by the Supreme Court of the State of Oregon to compel the withdrawal of the free use of such secular textbooks by children attending Catholic schools meeting state educational standards, on the sole ground that "the teaching of the precepts of Catholicism is an inseparable part of the educational process" in such schools,

(a) Violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by establishing an invidiously discriminatory classification based solely on religion, and

(b) Violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution by imposing an educational and economic burden not only on the children who attend such Catholic schools but also on the parental and religious right of parents to select such schools for the education of their children, and

(c) Violates the First Amendment of the United States Constitution by imposing a financial burden on the exercise of the parents' religious right to select religiously-oriented schools for their children's education.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

Constitution of the United States, Amendment XIV, Section 1:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Constitution of the State of Oregon, Article I, Section 5:

> "No money shall be drawn from the Treasury for the benefit of any religeous [sic], or theological institution, nor shall any money be appropriated for the payment of any religeous [sic] services in either house of the Legislative Assembly."

Oregon Revised Statutes, Section 337.150:

> *"337.150. Free textbooks; duty to provide, 'standard school' explained.*
>
> "(1) Each district school board shall, in the manner specified in ORS 328.520 and 328.525, provide textbooks, prescribed or authorized by law, for the free and equal use of all pupils residing in its district and enrolled in and actually attending standard elementary schools or grades seven or eight of standard secondary schools.
>
> "(2) For the purpose of ORS 328.520, 328.525 and 337.150 to 337.250 a school shall be standard when it meets the standards of the State Board of Education, except with respect to those standards applying to the ratio of pupils to the acre of school site, the square feet of classroom floor space per pupil and the ratio of pupils to teachers in classrooms, and when all teachers engaged in classroom instruction in said school hold a valid Oregon teaching certificate of the proper teaching level. The holding of such a teacher's certificate shall be evidenced by annual registration with the county school superintendent of the county in which the school is situated."

STATEMENT OF THE CASE

(1) The Historical Background

In 1922 the people of Oregon attempted through initiative legislation to compel all parents in the state to send their children to public schools. The law was invalidated by the unanimous decision of this Court in *Pierce* v. *Society of Sisters,* 268 U.S. 510.

In 1931 the legislature of Oregon enacted a statute providing free textbooks for the use of pupils attending the public elementary schools of Oregon. Oregon Laws 1931, chapter 61. The Attorney General of Oregon, appearing in the court below as *amicus curiae*, has described (Brief, p. 3) this 1931 law as

> "... a product of the depression of the 1930's. Under the compulsory school law, children were required to attend school, and yet, because of financial stress, their parents in many instances were unable to provide their children with the necessary texts to enable them to realize the benefits of the education furnished them by the state for their individual welfare as well as in the interest of the state and the general welfare of the community at large in creating an educated citizenry."

The validity of such legislation, limiting free textbooks to pupils attending public schools, is not in issue in this case. The present case arises out of a 1941 amendment to the free textbook law (Oregon Laws 1941, chapter 485), which, as amended,[2] decrees that each school district shall provide text books "for the free and equal use of all pupils residing in its district and enrolled in and actually attending standard elementary schools or grades seven and eight of standard secondary schools." ORS 337.150. A school is considered "standard" when it meets certain prescribed standards of the Oregon State Board of Education.

The 1941 revision of the statute accomplished two things: (1) it made the eligibility of children for free

[2] The inclusion of pupils attending grades seven and eight of standard secondary schools, in addition to those attending the standard elementary schools, was accomplished by an amendment to the statute in 1955. Oregon Laws 1955, chapter 486.